

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

BILL BARRIER,

Plaintiff,

v.

CITY OF THE DALLES, *et al.*,

Defendants.

Case No. **3:18-cv-01084-AC**

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge John V. Acosta issued Findings and Recommendation in this case on June 4, 2019. ECF 22. Defendants moved to dismiss all claims asserted by Plaintiff for failure to state a claim. Magistrate Judge Acosta recommended that the Court grant Defendants' motion to dismiss (ECF 13) with respect to Plaintiff's first, second, third, fourth, fifth, and seventh claims, and deny Defendants' motion with respect to Plaintiff's sixth claim. Magistrate Judge Acosta recommended that the Court dismiss Plaintiff's fourth and seventh claims with prejudice, and dismiss Plaintiff's first, second, third, and fifth claims without prejudice and with leave to amend. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”).

Although review is not required in the absence of objections, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate judge’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Acosta’s Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Magistrate Judge Acosta’s Findings and Recommendation, ECF 22. The Court **GRANTS** Defendants’ motion to dismiss (ECF 13) with respect to Plaintiff’s first, second, third, fourth, fifth, and seventh claims, and **DENIES** Defendants’ motion with respect to Plaintiff’s sixth claim. The Court dismisses Plaintiff’s fourth and seventh claims with prejudice, and dismisses Plaintiff’s first, second, third, and fifth claims without prejudice and with leave to amend.

IT IS SO ORDERED.

DATED this 27th day of June, 2019.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge